

**STATE OF MINNESOTA  
In Supreme Court**

**FILE NO. ADM-09-8002**

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**Petition of the Minnesota State Board  
of Law Examiners for Amendment  
of the Student Practice Rules**

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**PETITION FOR  
RULE AMENDMENT**

**TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:**

Petitioner, the Minnesota State Board of Law Examiners (“Board”), respectfully requests that the Court adopt revisions to the Student Practice Rules to broaden the scope to permit recent law school graduates the ability to qualify under the Rules, to remove the restriction that recent graduates sit for the first bar examination following graduation, and to simplify and clarify the duties and responsibilities of the parties involved in the administration of the Rules. The Board further requests that the Court rename the Rules “Supervised Practice Rules” to reflect the expansion.

In support of its Petition, the Board states the following:

1. The Board assumed responsibility for the administration of the Student Practice Rules in 2013.
2. Between 2013 and the present, Board staff has been reviewing the questions the Board office receives related to these Rules and has been drafting a comprehensive rewrite, with the plan to propose the revisions sometime in late 2020.
3. On March 13, 2020, the Governor of the State of Minnesota declared a peacetime emergency related to COVID-19, creating restrictions on public activities in the interest of public health. Exec. Order No.20-01 (March 13, 2020). Since that time, the Governor has issued Executive Orders providing additional restrictions significantly

impacting activities through May 4, 2020. There is still significant unknown information as to the length of time these restrictions may last.

4. The Minnesota Board of Law Examiners is scheduled to administer the Uniform Bar Examination (UBE) on July 28 and 29, 2020.

5. The UBE is a test developed by the National Conference of Bar Examiners (NCBE). The NCBE has stated that it will determine by May 5, 2020, whether there is a sufficient number of examinees to administer the examination in a way that will provide accurate psychometric measures.

6. The NCBE has also provided the alternative testing dates of September 9<sup>th</sup> and 10<sup>th</sup>, and September 30<sup>th</sup> and October 1<sup>st</sup>, in the event that jurisdictions do not believe they can safely administer the July exam.

7. At present, thirteen jurisdictions have postponed the administration of their examination to September.<sup>1</sup>

8. The Board has advised applicants and the Minnesota law schools that at this time, it intends to administer a July examination, but has acknowledged that there are many uncertainties related to this situation and that the decision may not be within the Board's control.

9. In addition to planning for a July examination, the Board has determined that it will plan to administer the UBE in Minnesota on September 9 and 10, 2020.

10. The Board will be making additional decisions related to the July and September examinations at the Board's May 15, 2020 Board meeting, recognizing that applicants need sufficient time to prepare for a July examination, but also cognizant that more information will be known on May 15, 2020 than is known today.

11. The Board shares the concerns of the Deans from the three Minnesota law schools that the class of 2020 is already facing significant economic and professional challenges, and that an inability to sit for the examination in July will create an additional hurdle for these graduates. Adding a September date does not resolve this hurdle.

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<sup>1</sup> Alaska, Connecticut, District of Columbia, Georgia, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont and Wyoming.

12. Additionally, the anxiety for these graduates related to the uncertainty of whether the July examination will take place may be reduced by providing an additional opportunity for supervised practice until an examination can be safely administered.

13. A potential way to mitigate this challenge would be for the Court to adopt a modest expansion of the Student Practice Rules to allow recent graduates to practice under the supervision of a Minnesota licensed lawyer in good standing.

14. This change is one that Board staff had already flagged as an issue to consider in the comprehensive rewrite.

15. Under the current Rules, an individual must be “duly enrolled” to be certified. (Rule 1.02, 2.02, and 3.02.)

16. The certification does not terminate at graduation, so individuals certified in May prior to degree conferral are able to remain certified until they fail to take the first examination offered, fail the examination, or are admitted. (Rule 1.03, 2.03, and 3.03)

17. Individuals who request certification one day after graduation are ineligible because they are not duly enrolled.

18. The second substantive change that the Board would recommend that the Court make to the Rules either on a temporary or permanent basis would be to remove the requirement that specifically requires that the lawyer work for indigent clients. (Rule 1.01) A broader representation is already permitted under the clinical student practices rules, so this would also be a modest change. (See Rule 2.01)

19. A rule that would permit law students and recent graduates to work under the supervision of any licensed lawyer in good standing would serve both to increase Access to Justice and to provide additional employment opportunities during the period between graduation and licensure.

20. A third substantive change would be to remove the requirement either on a temporary or permanent basis that the recent graduate sit for the first available examination, and would instead extend the supervised practitioner status for eighteen months, unless the individual was admitted or failed the bar examination before then.

21. Because the Board is proposing a complete rewrite of the Rules, the attached documentation does not contain strike through language. The additional revisions to the Rules are to provide additional clarity, to delineate between a law student and a recent graduate, to outline clearly the responsibilities of each stakeholder in the process, and to create a definitions section.

22. These changes are intended to increase clarity in the administration of the Rules. The Board further recommends that the Rules be titled Supervised Practice Rules, instead of the Student Practice Rules.

23. The following language related to Student Observation that the MSBA Petitioned for in 2009 has been retained, but moved from current Rule 3.01 to revised Rule 2E:

Communication between the client and the student shall be privileged under the same rules that govern attorney-client privilege and work product doctrine, and the presence of a student during communication between the lawyer and the client shall not, standing alone, waive these evidentiary privileges.

24. The Board recognizes that a rewrite to the Rules would be a change that would typically go out for public comment.

25. In light of the extraordinary circumstances related to COVID-19 and the uncertainty that the class of 2020 is facing, the Board recommends that the Court adopt the proposed revisions on a pilot basis, with the requirement that the Board file a report on or before July 1, 2021, containing an assessment of the implementation of the revisions and recommendations for any additional changes at that time. The Board anticipates that the revised Rules would remain in effect until the Court has time to consider the pilot and either adopt these Rules on a permanent basis, or promulgate revisions.

The Board respectfully requests that the Court amend the current Student Practice Rules and adopt the proposed amended Rules attached to this Petition.

Dated: 4/20/2020

/s/  
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